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| EXAMINER |
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ZURITA, JAMES II

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| ART UNIT | PAPER NUMBER |
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3625

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09/15/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/812,998

Applicant(s)

HINMAN, LEE MELVIN

Examiner

JAMES ZURITA

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 06/10/2009 has been entered.

Power of Attorney

The Examiner notes that applicant has not filed appropriate power of attorney for Wilson Daniel Swayze.

Preliminary Notes

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450.

Response to Amendment

On 10 June 2009, applicant added claims 25-46.

The Examiner notes that applicant's after-final of 03/24/2008 was not entered, as per Advisory Action of 08/06/2008.

Claims 25-46 are pending and will be examined.

Response to Arguments

Applicant's arguments filed 06/10/2009 have been fully considered.

Rejections of claims 13-25 are moot in view of cancellation of rejected claims.

Claim Objections

Claims 26-42 are objected to because of the following informalities:

In Claim 26 "...the generated product..." lacks antecedent basis. Prior steps refer to generating a display, and do not refer to generating a product.

Claim(s) 27-42 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form and pay the appropriate fees. The above claims are written in dependent format in that they reference a prior method claim. See 37 CFR 1.75 and MPEP § 608.01(m) for proper formats. In claims 27-42, the phrase "A software method..." is interpreted as "**The** software method..."

In claims 26-42, "...method for defining and e-commerce and portal system..." appears to be a typing error and is interpreted to read "...method for defining an e-commerce and portal system..."

Deleted: and

In claim 41, the term "...the boundary..." lacks antecedent basis, since there is no mention of boundary in parent claim 26. Claim 41 should be amended to depend from claim 40.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 26-42 are rejected under 35 U.S.C. 101 because they are directed to non-statutory subject matter. Based on Supreme Court precedence see *Diamond v. Diehr* 450 US 175,184 (1981); *Parker v. Flook*, 437 US 584,588,n. 9 (1978); *Gottschalk v. Benson*, 409 US 63, 70 (1972); *Cochrane v. Deener*, 94 US 780, 787-88 (1876) a 101 process must (1) be tied to another statutory class (such as an apparatus) or transform

underlying subject matter (such as an article or materials) to a different state or thing.

Since neither of these requirements is met by the claim the claim is rejected as being directed to non-statutory subject matter.

Claim 26 is drawn to a method...comprising the steps of...

- ...connecting a...screen to the Internet
- ...generating a...display corresponding to a product on...the screen based upon a...question...
- ...determining if a XSD is present for the ...product
- ...generating the...question based on the XSD.

The nonfunctional descriptive language "...for defining and [sic] e-commerce and portal system...product user e-commerce [screen]..." carries little to no patentable weight. The language refers to actions that are implied and not positively recited and take place outside the metes and bounds of the claims.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 26-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 26, the abstract refers to "...An E-commerce system logic of defining product specifications with or without option variable questions by means of a XSD file...[abstract]..." emphasis added. It is not clear whether claims an option variable question outside the context of an XSD file. If the option variable question exists only

within the context of an XSD, the limitation "...determining if a XSD is present for..." renders claims 26-42 indefinite, since, if an XSD is **not** present, claims 27-42 never take place. It is thus not possible to determine the scope of the claim as requiring both items or only one of the items separated by the or. For purposes of this examination, examiner will give the term its broadest reasonable interpretation and consider that the particular condition is satisfied if one of the limitations is met.

The Examiner suggests clarifying his method claims to more closely match the steps disclosed in Figs. 1 and 2, and described in the specification, as in para 047-49, for example.

For purposes of Examination, the claims are interpreted as being directed to a system that uses XSD with options that can be changed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 26, 30-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Davidov et al. (US 7,305,671).

As per claim 26, Davidov discloses software method(s) for defining an e-commerce and portal system (e.g., Davidov, col. 37, line 65-col. 28, line 10), comprising the steps of:

connecting a product user e-commerce screen to the Internet; see, for example, Davidov, col. 7, lines 1-14.

generating a product display corresponding to a product on the product user e-commerce screen based upon a option variable question; see, for example, Davidov, col. 4, lines 21-23, col. 38, lines 11-20.

determining if a XSD is present for the generated product; see, for example, Davidov, col. 9, line 48-col. 10, line 22.

generating the option question based upon the XSD. See, for example, Davidov, col. 37, lines 26-35 and references to prompting a user.

As per claim 30, Davidov discloses that the XSD includes a title of the screen. See, e.g., Davidov, col. 17, lines 55-65.

As per claim 31, Davidov discloses that the XSD includes a format of a prompt question. See, for example, at least col. 37, lines 26-35.

As per claim 32, Davidov discloses that the XSD includes a data input error. See, for example, Davidov, col. 3, lines 27-45.

As per claim 33, Davidov discloses that the XSD includes an edit rule. See, for example, Davidov, col. 16, lines 52-67.

As per claim 34, Davidov discloses that the XSD includes an error message. See, e.g., Davidov, col. 39, lines 21-43.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27-29, 35-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davidov.

Davidov does not specifically disclose that the XSD

defines a title of data input (claim 27);
includes a width of the screen (claim 28);
includes a height of the screen (claim 29);
includes product option questions (claim 35);
includes crosschecking between option selections (claim 36);
includes a minimum valid value for another element of the XSD (claim 37);
includes a minimum inclusive element (claim 38);
includes a minimum exclusive element (claim 39);
includes a maximum inclusive element which includes a high boundary limit which may be reached (claim 40);
that the boundary includes a maximum exclusive element which includes a high boundary limit which may not be reached (claim 41).
includes a pattern element to specify a regular expression pattern of another element of the XSD (claim 42).

However, it would have been obvious to one of ordinary skill at the time the invention was made to extend Davidov's use of XSDs to disclose that the XSD

defines a title of data input (claim 27);
includes a width of the screen (claim 28);
includes a height of the screen (claim 29);
includes product option questions (claim 35);
includes crosschecking between option selections (claim 36);
includes a minimum valid value for another element of the XSD (claim 27);
includes a minimum inclusive element (claim 38);
includes a minimum exclusive element (claim 39);
includes a maximum inclusive element which includes a high boundary limit which may be reached (claim 40);
that the boundary includes a maximum exclusive element which includes a high boundary limit which may not be reached (claim 41).

includes a pattern element to specify a regular expression pattern of another element of the XSD (claim 42),

because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES ZURITA whose telephone number is (571)272-6766. The examiner can normally be reached on 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on (571)272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James Zurita/
James Zurita
Primary Examiner
Art Unit 3625
11 September 2009